

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

FEB 10 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Sections 74.1231)	MM Docket No. 97-
74.1232, 74.1233, 74.1284 of the)	RM-9419
Commission's Rules)	

To: The Commission

COMMENTS

Pinebrook Foundation, Inc. ("Pinebrook"), by its attorneys, hereby submits its comments in response to the Petition for Rulemaking filed by American Community AM Broadcasters Association ("ACAMBA"), initiating the captioned rulemaking proceeding. *See Public Notice*, DA 98-2527, released December 10, 1998. The Petition requests amendments to pertinent provisions of Part 74, in order to allow AM licensees to become licensees of FM translators for retransmission of their signals as "fill in" service. For the reasons set forth below, Pinebrook strongly endorses ACAMBA's proposal and urges the Commission to amend its FM translator rules accordingly.

I. INTRODUCTION

In an era of HDTV, digital FM radio, interactive video and 300 channel cable systems, AM radio's plight seems strangely anachronistic. At the turn of the millennium, the phenomenon of a radio station's viable operation turning (literally) on the rise and setting of the sun, as is the case with most AM stations, is more suited to the diurnal imagery of a Druid ceremony than for the pages of Radio Weekly. Yet, the loss of nighttime coverage that AM

No. of Copies rec'd 074
List ABCDE

stations experience is a painful fact of business life for daytime AM radio licensees. The loss is particularly acute for daytime-only stations. Even when a few watts of “post sunset” power is allowed, nighttime coverage is inadequate and reception areas are drastically reduced, putting these AM stations at a conspicuous disadvantage in their ability to serve the public and compete in the communications market place. Local markets are more competitive today -- by dint of the sheer number of alternative “voices” -- than at any other time.

Indeed, the issue has multiple ironies. As the first national medium of electronic mass communications in the United States, AM radio’s contributions to contemporary life in America is indisputable. As the Commission eloquently put it:

AM service [has been] a unifying force throughout the country, providing a wealth of news, information, entertainment, education, and political dialogue readily accessible to virtually all Americans. In the process, it literally revolutionized the fabric of our daily lives, our dialogue and our democracy.

Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd. 6273, 6274-75 (1991).

In the same proceeding, the FCC emphatically reiterated its commitment to ensuring the continuing viability of the AM broadcast service. Recognizing the “shift in listenership [that] has clearly dulled the competitive edge of this once vital service,” *ibid*, the Commission averred:

AM radio continues to hold a valuable place on the communications landscape. AM service provides a significant number of outlets that contribute to the vital diversity of viewpoints and programming available to Americans. Indeed, AM often offers the only radio service to listeners in a variety of circumstances, particularly those living in and traveling through rural areas.

In view of the undisputed public importance of AM service, we believe that innovative and substantial regulatory steps must be taken to ensure its health and survival.

Ibid. Moreover, in a real sense the AM radio service has actualized the basic goal of the Communications Act more successfully than any other communications service, and continues to do so. Use of the airways "to serve the public interest and necessity," *see* 47 USCA §151, is uniquely exemplified by service to local communities -- the principal areas in which AM licensees excel as responsible stewards of their licensed spectrum. As ACAMBA pointed out in its Petition, "AM stations are integrally intertwined with the vitality and prosperity of local communities." *ACAMBA Petition* at 5.

Pinebrook is a nonprofit foundation which uses the facilities of AM station WPEO, Peoria, Illinois to serve the problems and needs of Peoria and a large surrounding rural area. Unfortunately, its inability to broadcast after dark poses a tremendous handicap to its ability to serve the public.

Pinebrook applauds the FCC for initiatives it has taken over the last ten years to "identify the [AM] services' most pressing problems and, where relevant and feasible, to adapt the regulatory environment for AM stations that will ameliorate those problems," *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd. 6275 (1991), and thus to aid AM licensees by regulatory changes of a *systemic* kind. But more is needed -- and urgently needed. ACAMBA's proposal, as we understand it, is timely and practicable. It will provide a mechanism to revitalize the operations of hundreds of AM

radio facilities immediately, without in any way jeopardizing ongoing efforts by the FCC to refashion the framework in which AM radio is regulated. Just as significantly, the requested change will cohere with the Commission's refinements of its spectrum management responsibilities across the variety of communications services under the FCC's jurisdiction.

II. ACAMBA'S PROPOSAL IS WORKABLE AND SHOULD BE ADOPTED

Under the current Part 74 rules, an FM translator may be used only to retransmit the signals of FM broadcast stations to areas where direct reception of the FM service is unsatisfactory. This limitation on the use of FM translators, given the technical disabilities under which AM radio operates, is not defensible *unless* there are valid technical reasons for precluding the use of FM translators by AM licensees. Principally for two reasons, that technical predicate does not override the obvious public interest benefits that would be gained by adopting ACAMBA's proposal.

First, in contrast to similar proposals that the FCC previously has rejected, ACAMBA's plan would allow for the use of an FM translator station as a fill-in service for AM stand-alone stations with a licensed daytime power *not exceeding* 2,500 watts and a licensed nighttime power *not exceeding* 500 watts. In addition, the ACAMBA proposal would limit translators to locations outside the .5 mV/m contour of the AM station, as opposed to the 1 mV/m contour proposed in the past. These features distinguish ACAMBA's Petition from that considered and rejected by the FCC in *Amendment of Part 74, Subpart L of the Commission's Rules Pertaining to FM Translators*, 49 RR 2d. 1499, released July 15,

1981. Therein, the Rocky Mountain Broadcasters Association sought amendment of Part 74 to permit retransmission of AM broadcast signals by FM translators in areas beyond the predicted 1 mV/m field strength contour of existing AM and FM stations. The Commission rejected the idea at that time because it perceived the petitioners' asserted rationale "in terms of providing an aural radio service to isolated rural communities not having such service by relaying the AM signal *beyond* its normal satisfactory reception range." *Id.* at ¶3 (emphasis added). The Commission concluded that this rationale was "generally inaccurate when applied to the extension of an AM station's signal" because of "the propagation differences between frequencies in the AM and FM bands." *Ibid.*

Specifically, because the primary AM broadcast signal is a groundwave, *i.e.*, it follows the contours of the earth, its diminution is not impeded by irregular terrain but "due largely to losses related to the conductivity of the earth." *Ibid.* The propagation characteristics of the AM band normally do not leave service voids similar to those found in the FM band. Therefore, the notion of AM licensees using FM translators to provide "fill in" service was -- the FCC reasoned -- in practical effect, a misnomer. *Id.* at ¶4. The Commission raised the same concern several years later when it revisited the issue in late 1990. The Commission stated: "The groundwave propagation characteristics of AM signals are such that they normally do not leave service voids or 'shadowing' (*i.e.*, holes in coverage) similar to the 'shadowing' found in the FM band. . . . Thus, there is generally no reason for AM licenses to establish fill-in service facilities on the FM band." *In re Amendment of Part 74 of the*

1981. Therein, the Rocky Mountain Broadcasters Association sought amendment of Part 74 to permit retransmission of AM broadcast signals by FM translators in areas beyond the predicted 1 mV/m field strength contour of existing AM and FM stations. The Commission rejected the idea at that time because it perceived the petitioners' asserted rationale "in terms of providing an aural radio service to isolated rural communities not having such service by relaying the AM signal *beyond* its normal satisfactory reception range." *Id.* at ¶3 (emphasis added). The Commission concluded that this rationale was "generally inaccurate when applied to the extension of an AM station's signal" because of "the propagation differences between frequencies in the AM and FM bands." *Ibid.*

Specifically, because the primary AM broadcast signal is a groundwave, *i.e.*, it follows the contours of the earth, its diminution is not impeded by irregular terrain but "due largely to losses related to the conductivity of the earth." *Ibid.* The propagation characteristics of the AM band normally do not leave service voids similar to those found in the FM band. Therefore, the notion of AM licensees using FM translators to provide "fill in" service was -- the FCC reasoned -- in practical effect, a misnomer. *Id.* at ¶4. The Commission raised the same concern several years later when it revisited the issue in late 1990. The Commission stated: "The groundwave propagation characteristics of AM signals are such that they normally do not leave service voids or 'shadowing' (*i.e.*, holes in coverage) similar to the 'shadowing' found in the FM band. . . . Thus, there is generally no reason for AM licenses to establish fill-in service facilities on the FM band." *In re Amendment of Part 74 of the*

Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd. 7212, at ¶9, released December 4, 1994. Unfortunately, this position fails to take into account the fact that daytime-only AM stations are faced with a *total* "hole in coverage" every day at sunset. If AM licensees were allowed to become licensees of FM translator facilities, that hole could be filled to a substantial extent.

By limiting translators to locations within the 0.5 mV/m contour of AM stations, the ACAMBA proposal satisfactorily resolves any concern that the AM licensee would, in effect, be relaying the AM signal beyond its normal satisfactory reception range.¹ The FCC's prior reluctance to embrace an ACAMBA-type proposal on this ground, therefore, does not pertain here.

Second, as ACAMBA's Petition points out, recent advances in broadcast antenna and receiver technology help to assuage the FCC's earlier concern that such a proposal would not be technically feasible. Millions of relatively inexpensive receivers with poor selectivity and sensitivity levels are still in use, but over time they should form a smaller proportion of the receiver universe.

It should also be noted that the technological differences between AM and FM stations provide a further basis for the grant of the ACAMBA petition. Because of the reception

¹ Due to what is evidently a typographical error, the Petition seems to espouse a rule that would limit FM translators to the area outside the 0.5 mV/m contour of the parent AM station. *Petition* at 7. However, from the text of the proposed rules which accompanies the Petition, it is apparent that ACAMBA intended to limit the use by AM licensees of FM translators to locations *within* the parent AM stations 0.5 mV/m contour.

difficulties FM broadcasters face in areas with rough terrain, numerous FM translators have been authorized over the years to provide "fill-in" service. However, very few translators have been authorized in the commercial FM band in areas of relatively smooth terrain such as the Midwest and the coastal plain of the South.

The obvious reason for this lack of interest in frequencies for translator facilities is that FM radio stations in those areas do not need "fill-in" translators because they have no holes in coverage to fill in. Thus, in areas of flat terrain those interstices of the FM spectrum which might well be needed to fill in holes in coverage of FM stations if they were in mountainous areas remain largely open for use by AM stations in remedying their lack of nighttime coverage.

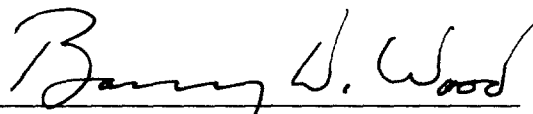
It is common in the evolution of its regulatory proceedings for the Commission to countenance the technical feasibility necessitated by an amendment to the rules which, when proposed at an earlier, more nascent stage, the Commission legitimately rejected as technically unviable. A recent example of this very phenomenon is the technology known as "channel mapping" that today has become such a routine and important dimension of the optimally efficient use by wireless cable operators of leased ITFS spectrum. When channel mapping was initially proposed in the late 1980s, it was rejected by the FCC as technically unfeasible; when the idea was revisited several years later, it was adopted. The same dynamic is in play here, where the argument for the timeliness of so-called "cross-service translating" has not been explicitly addressed by the FCC since the early 1990's.

III. CONCLUSION

The adoption of ACAMBA's Petition would promote the public interest by providing improved nighttime coverage opportunities for people to access the programs of local AM stations service areas. Moreover, the proposed change would promote competition by lessening a critical handicap facing AM broadcasters, and particularly the licensees of daytime-only stations. Accordingly, Pinebrook urges the Commission to amend its FM translator rules as set forth in ACAMBA's Petition. In the alternative, if the Commission should consider that the opportunity to use FM translator facilities should not be opened to those AM stations which have some nighttime operating authority at this time, the Commission could focus the relief on the stations with the greatest need; *i.e.*, those with no practical nighttime power at all (*i.e.*, those with no nighttime authority at all, or with post sunset authority of less than 100 Watts.)

Respectfully submitted,

PINEBROOK FOUNDATION, INC.

By: 
Barry D. Wood
Ronald D. Maines

WOOD, MAINES & BROWN,
CHARTERED
1827 Jefferson Place, NW
Washington, D.C. 20036
(202) 293-5333

Its attorneys

Dated: February 10, 1999